Before the
Federal Communications Commission
Washington, DC

In the matter of:

Application for Review by ePlus Technology of a decision of the Universal Service Administrative Company	)
Federal State Joint Board on Universal Service	) CC Docket No. 02-6

Universal Service Administrative Company Decision on Appeal Dated March 18, 2005
Demand Payment Letter Dated December 23, 2004 (Second Request)
Form 471 Number: 314883
Funding Request Number: 825491
Funding Year: 2002
Billed Entity Number: 123417
Applicant Name: Vineland School District
Vendor Name: ePlus Technology, Inc
SPIN: 143006553

Application for Review

Summary

In accordance with Sections 54.719 through 54.721 of the Commission's Rules, now comes ePlus Technology, Inc. (ePlus) before the Federal Communications Commission (Commission) requesting review of a decision of the Universal Service Administrative Company (Administrator). This Application for Review comes before the Commission in a timely manner, as the December 23, 2005 Demand Payment Letter was the first and only notice received by ePlus from the Administrator. The Administrator failed to properly serve ePlus notice of apparent rule violation, improperly demanded fund recovery from ePlus, and failed to rectify the error on appeal. With this Application for Review, ePlus asks the Commission to overturn the Administrator's decision and remand this payment demand to the Administrator with instructions to seek recovery

from Vineland School District in accordance with provisions of the Fourth and Fifth Orders on Reconsideration in Proceeding 02-6.

Statement of Facts

During the E-Rate filing window for Funding Year Six (July 1, 2002 through June 30, 2003), ePlus Technology entered into a contract with Vineland School District, New Jersey to provide services that were eligible for E-Rate funding. Vineland filed FCC Form 471 seeking discounts of eligible services provided under the contract. After thorough review by the Administrator, Vineland was funded for E-Rate discounts on eligible services provided by ePlus. During the fund year, ePlus provided services to Vineland and billed the school district the non-discounted amount, authorized by the Administrator and billed the Administrator the discounted amount. On (DATE, Check Number), Vineland paid ePlus for the services and on (Date, Check Number) the Administrator paid ePlus for authorized E-Rate discounts.

Subsequent to the services being rendered, invoices issued and payment made, the Administrator initiated a review of the Vineland application. During the review, the Administrator determined Vineland had "...failed to demonstrate that at the time of filing the Form 471 the financial resources necessary to pay the non-discounted charges on your application, as well as the rest of the items that you outlined in your technology budget, had been secured. As a result, the commitment amount is rescinded in full." [1]

In correspondence dated July 7, 2004 from the Administrator to Dawn Belden, Vineland School District, 133 N. State Street, Newton, PA with a salutation: "Dear Service Provider Contact:" the Administrator indicated a "Commitment Adjustment

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[1] Demand Payment Letter dated December 23, 2004, Page 4

Letter" had been recently sent to you (service provider) that funds needed to be recovered for the Funding Request Number (FRN) under appeal here. The letter continues with instructions on how the service provider should remit payment. On Page three of the correspondence, the Administrator indicates that a copy of the correspondence was sent to Dawn Belden, Vineland School District, 133 N. State Street, Newton, PA. (Correspondence attached here as Attachment 1). It should be noted here that Dawn Belden is an E-Rate consultant with Educational Consortium for Telecommunications Savings and not an employee of either Vineland School District or ePlus Technology. It should also be noted that ePlus Technology did not receive the July 7 correspondence from the Administrator and has never received the Commitment Adjustment Letter mentioned in the first paragraph of the July 7 letter.

In correspondence dated December 23, 2004 from the Administrator to Darren Raiguel, ePlus Technology, Inc. 130 Futura Drive, Pottstown, PA, with no salutation at all, the Administrator issued a Demand Payment Letter, SECOND REQUEST (correspondence attached here as Attachment 2). This correspondence requested immediate payment to the Administrator of $32,583.06 from ePlus. According to the correspondence, a copy of the letter was sent to Steve Dantinne of the Vineland School District. This letter was the FIRST notice ePlus was given regarding an alleged rule violation by Vineland and the FIRST notice of repayment demand. It should be noted again that the first communication received by ePlus concerning this "Commitment Adjustment" occurred after December 23, 2004.

ePlus appealed the December 23 Demand Payment Letter, SECOND REQUEST to the Administrator in an appeal letter postmarked January 14, 2005 and attached her as (Attachment 3). In correspondence dated March 18, 2005 the Administrator denied the

ePlus appeal for the stated reason: "Our records show that your appeal was postmarked more than 60 days after the date your Funding Commitment Decision Letter was issued…FCC rules do not permit the SLD to consider your appeal."[2] The correspondence also afforded ePlus the opportunity to appeal the Administrator's decision to the Commission within 60 days. Thus, this appeal comes before the Commission in a timely manner.

Discussion

The Commission has before it at least two similar appeals from companies who claim not to have received notice of commitment adjustment from the Administrator.[3] In addition, the Commission sought comments on a number of issues raised in the Connect2 Consolidated Appeals.[4] Comments were due February 22, 2005 and replies were due on March 9, 2005. Greg Weisiger was the sole commenter. The State E-Rate Coordinators' Alliance (SECA) and Connect2 provided reply comments.

In his comments, Mr. Weisiger notes that a commitment adjustment normally occurs ***after*** work has been performed and monetary obligations have been made on the basis of a previous "commitment" by the Administrator.[5] Therefore, any fund repayment notice issued by the Administrator would constitute a "fine" or "Notice of Apparent Liability" under Commission rules. Mr. Weisiger cites Commission Practice and Procedure for proper delivery of a Notice of Apparent Liability: "(2) *Delivery.* The notice

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[2] Administrator's Decision on Appeal Dated March 18, 2005 paragraph 1.
[3] Marconi Telecommunications Application for Review dated December 16, 2004; Connect 2 Consolidated Requests for Review and Petitions for Waiver, dated December 27, 2004.
[4] FCC Public Notice, DA 05-146, Rel. January 21, 2005
[5] Weisiger Comments, Submitted February 7, 2005 Page 6: "A funding commitment adjustment is by definition an adjustment to previously committed funding. In the vast majority of cases, a commitment is adjusted AFTER funds have been disbursed to either the vendor or the applicant. If funds had been disbursed, presumably work had been performed and invoices satisfied. A commitment adjustment in this case would represent a demand for money, or fine, by the Commission (USAC as an agent of the Commission)."

of apparent liability will be sent to the respondent, ***by certified mail***, at his last known address (see §1.5)."[6] (emphasis added). As an entity whose very existence began with a Commission Order and without the ability to make policy, the Administrator must use Commission Practice and Procedure as the basis for its service of notice.

Marconi Appeal

In its appeal, Marconi cites the due process clause of the United States Constitution and the Administrative Procedure Act that "…a party has a right to notice and a hearing before being forced to pay a monetary penalty. Air transport Ass'n of America v. Dep't of Transp., 900 F.2d 369 (C.A.D.C. 1990)."[7] Further, Marconi agrees with commentors and Commission Practice and Procedure that: "At the very least, proper notice required that the FCC clearly label the Letter to denote its importance, and ensure that an authorized Marconi official verify ***by signature*** that it was delivered. USAC did not even arrange for delivery of the Letter by Certified Mail, but, rather, simply concludes that since its own records "do not indicate that it was returned as undeliverable" Marconi must have received it (note that USAC does not have any records, receipt or any evidence indicating that the Letter was delivered)."[8] (emphasis added).

The Administrator Has No Service Policy

The Commission's Fifth Report and Order required the Administrator to submit to the Commission a proposed audit resolution plan.[9] In response, on October 29, 2004 the Administrator delivered to the Commission a 52 page document titled "Administrative Procedures." The document contains a wealth of information about how the

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[6] Part 47, Title 1, Section 1.80 (f)(2)
[7] Marconi, page 4
[8] Marconi, page 5
[9] FCC Fifth Report and Order, CC Docket No. 02-6, FCC 04-190, Rel. August 13, 2004 at 74

Administrator reviews applications and administers Commission orders; however the Administrative Procedures document is absolutely silent on the method the Administrator uses to serve notice of hearing and debt collection notice on applicants or vendors. The absence of such an important aspect of due process would imply that established Commission policies would be utilized, since it has been well established that the Administrator may not make policy for itself. Again, Commission Practice and Procedure requires that debt collection notice be delivered via Certified Mail.

Debt Collection Improvement Act Requires Notification

With the December 23, 2005 Demand Payment Letter, the Administrator cites the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996 (Public Law 104-134), with specific reference to 31 U.S.C Section 3701 as the authority to collect funds and possibly impose sanctions. Section 3701 also contains, among other things:

> Section 31001(b) of Pub. L. 104-134 provided that: "The purposes of this section [see Short Title of 1996 Amendment note above] are the following:
>
> …
>
> "(5) To ensure that debtors have all appropriate due process rights, including the ability to verify, challenge, and compromise claims, and access to administrative appeals procedures which are both reasonable and protect the interests of the United States.

Detailed in the preceding sections is evidence that the Administrator did not provide "appropriate due process rights" to entities now seeking Commission review. Regardless of how the Commission sides on what is "appropriate" due process. It must be noted here that ePlus received NO notice at all prior to December 23, 2004. Careful analysis of the July 7, 2004 Repayment/Offset Demand Letter (Attachment 1), shows that the letter was addressed to Dawn Belden, Vineland School District. At the end of the letter (Page 3), the letter was CC'd to Dawn Belden, Vineland School District.

Apparently, the letter was delivered to and copied to one person and one location – Dawn Belden, Vineland School District. As noted earlier, Dawn Belden is not an employee of ePlus. Thus, according to the Administrator's own correspondence, no notice was made to ePlus of a repayment demand. Certainly, no notice at all falls far short of "appropriate" notice required under the Debt Collection Improvement Act. This fact alone should convince the Commission that ePlus did not receive either the Repayment Demand Letter or the Commitment Adjustment Letter.

General Accounting Office Report

In March 2005, the General Accounting Office (GAO) issued a comprehensive report on the E-Rate program at the request of the House Energy and Commerce Committee. In its findings, the GAO noted that the Administrator had an "unusual" relationship with the Commission. Specifically, there was no contract memorandum of understanding, or letter of agency between the entities. Further, the GAO determined:

> "FCC's three key oversight mechanisms for the E-rate program—rulemaking procedures, beneficiary audits, and reviews of USAC decisions (appeals decisions)—are not fully effective in managing the program. FCC's rulemakings have often lacked specificity and led to situations where USAC, in crafting the details needed to operate the program, has established administrative procedures that arguably rise to the level of policy decisions, even though USAC is prohibited from making program policies. This creates a situation where important USAC administrative procedures have been deemed unenforceable by FCC with regard to the recovery of funds for violations of those procedures. While audits have been conducted on E-rate beneficiaries, FCC has been slow to respond to audit findings in the past."[10]

The GAO correctly finds that the Administrator is not held to account for many internally set "policy" decisions until brought forth to the light of public and Commission scrutiny. Often, the Commission has found that administrative procedures adopted by the

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[10] GAO-05-151 E-Rate Program Report Dated February 2005, Results in Brief, Pages 5 and 6

Administrator fly in the face of Commission rules. The lack of a stated policy regarding debt collection notification in the Administrator's Administrative Procedures document submitted under Commission Order means no policy exists and therefore the Administrator must adhere to the Commission's notification regulation as required by the Debt Collection Improvement Act.

The debt collection notice policy, in whatever unwritten form utilized by the Administrator, is included in the universe of ill-conceived policies improperly applied by the Administrator.

Administrator's History of Poor Performance

The Administrator has a long history of poor performance. The GAO report itemizes but a few instances. Because the Administrator has no contract or letter of agreement with the Commission, it is able to operate with relative impunity, until called to task by an applicant, vendor, the Commission, or elected official. The Administrator has a well documented and checkered history of failing to fulfill its obligation as steward of the E-Rate program. Because the Administrator is not a federal agency but a not-for-profit company, much of its internal workings are hidden from public scrutiny. Company contracts are not available to the public, operations and procedures of company sub-contractors are not disclosed, and the company fails to disclose to the public procedural or systemic problems that may adversely affect applicants. This culture of non-disclosure and attitude of secrecy may be at the heart of the Administrator's failure to properly serve ePlus, Connect2, Marconi, and perhaps others with notice of liability.

In Year Two of the program, a sub-contractor of the Administrator improperly rejected hundreds of applications simply because more than one certification page was included in a single envelope. The Administrator's sub-contractor was unable, or

unwilling to expend the necessary time to carefully open each envelope and determine its contents. Consequently, some 800 deserving E-Rate applicants received improper denial notices. After the problem was brought to the Administrator's attention, it was determined that the Administrator would "reach out" to affected applicants to restore the applications to "in window" status. To this date the Administrator has not acknowledged the denials and has not publicized the opportunity to remedy the situation publicly. Applicants improperly rejected by the Administrator were forced to rely on the Administrator's best efforts to locate them and cause their applications to be re-submitted. This became known as the "Pink Postcard" issue.

It has been revealed that approximately 100 applicant reimbursement checks were sent to the ***wrong vendors*** in November and December 2004. Again, the Administrator initiated an internal "fix" for the problem, but issued no public notice. There is some question if the Administrator even notified the Commission when the problem was discovered. Applicants submitting requests for fund reimbursement may still be waiting for money while the Administrator resolves how the problem occurred, how many checks were mis-directed, and how to resolve the problem. Again, the Administrator is doing this without public disclosure.

The Commission, in the Ysleta Order, commanded the Administrator to allow a number of E-Rate applicants re-apply for E-Rate discounts for which the Administrator had denied funding.[11] The Order granted a very limited number of applicants the ability to competitively bid for services and submit applications for E-Rate discounts outside the filing window. The Administrator was ordered to process the re-filed applications and

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[11] FCC Order on Request for Review by Ysleta Independent School District, FCC 03-313, Rel. December 8, 2003.

issue funding decisions based on application review. Despite clear direction, the Administrator managed to reject 13 of 25 (over half) re-filed applications as being filed outside the filing window. Like the Pink Postcard issue, the Administrator did not disclose the problem publicly, but individually reached out to the 13 affected applicants. Much more disturbing, a sub-contractor of the Administrator asked if the official database should be altered to reflect that none of the 13 applications had been rejected.[12]

The GAO report raised serious questions regarding the relationship between the Administrator and the Commission and lack of accountability. The Administrator is comprised of a few individuals in offices in Washington D.C. overseeing sub-contractors in Whippany, New Jersey; Lawrence Kansas; and Chicago, Illinois. The GAO is correct to question the structure of the administrative functions and accountability of the vast infrastructure the D.C. Administration has built far under the radar screen of public scrutiny.

The Administrator Should Seek Repayment from Vineland

In the course of reviewing and distributing nearly $2.25 Billion in funding to approximately 25,000 applicants, some funding will be disbursed in error. When the Administrator discovers it committed funds in error, it is compelled to seek repayment of those funds. Repayment was typically sought from the vendor in most cases, as the

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[12] Email from Raj Radhakrishnan (rradhak@neca.org) to various Administrator employees and sub-contractors dated July 19, 2004: "And also, please advice on what should be done for the other 13 Ysleta apps, that had recd. the OOW letter dated 7/7/2004. Should the dates be nulled out, so that it doesn't look as if they recd an OOW letter or should we just leave them as it is." Obtained under FOIA request.

vendor was the recipient of funding.[13] A number of parties sought reconsideration of this regulation asking the FCC to seek reimbursement from applicants where appropriate.[14] On July 30, 2004 the FCC released the Fourth Order on Reconsideration stating "Based on the more fully developed record now before us, we conclude that recovery actions should be directed to the party or parties that committed the rule or statutory violation in question."[15] The Fourth Order and subsequent Fifth Order reiterated that parties may challenge a ruling by the Administrator with the appeal process before the issuance of a letter demanding recovery of funds.[16]

Recovery of funds from ePlus in this case is unwarranted. According to the December 23 Second Notice, the Commitment Adjustment for this funding request resulted from a review, or audit of Vineland's records. According to the letter: "During the course of review you failed to demonstrate that at the time of filing the Form 471 the financial resources necessary to pay the non-discounted charges on your application, as well as the rest of the items that you outlined in your technology budget, had been secured. As a result, the commitment amount is rescinded in full."

EPlus had absolutely no control over Vineland's budget, its budget planning process or its technology planning. Any shortcomings in the Vineland application or implementation of E-Rate funded services rests with Vineland and not ePlus. In accordance with the Fourth and Fifth Orders, again, in effect when ePlus received the first correspondence dated December 23, all fund recovery should be directed to the party responsible for E-Rate rule infraction – Vineland.

Conclusion

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[13] CC Docket Nos. 97-21 and 96-45, Order, FCC 99-291 (rel. October 8, 1999) (Commitment Adjustment Order)

[14] Petitions for Reconsideration were filed by MCI WorldCom, Inc. (WorldCom), Sprint Corporation (Sprint), and the United States Telecom Association (USTA). Additional comments in support of the Petitions for Reconsideration were filed by Nextel Communications, Inc. (Nextel) and AT&T Corp. (AT&T).

[15] CC Docket Nos. 97-21, 96-45 and 02-6, Order, FCC 04-181 (rel July 30, 2004) at 10

[16] Fourth Order on Reconsideration, FCC 04-190, Rel. July 30, 2004 at 40

This Appeal to the Administrator was timely filed within 60 days of ePlus' first receipt of payment notice (December 23, 2004). The Administrator failed to properly serve notice on ePlus with the Commitment Adjustment letter or First Demand Payment Letter. This Application for Review is timely filed with the Commission within 60 days of the March 18 Administrator's Decision. The Administrator does not have a policy in place to serve liability notice to individuals and must adhere to Commission regulation and serve notice via Certified Mail, which it failed to do.

In accordance with the Fourth and Fifth Orders, the Administrator should direct repayment requests to Vineland School District, as it was Vineland not ePlus that allegedly committed the rule infractions for which repayment is sought.

We ask the Commission to remand this application to the Administrator for processing in accordance with Commission Regulation.

In the alternative and in the public interest, we ask the Commission to waive the 60 day appeal deadline and remand this appeal to the Administrator for proper repayment processing.

Respectfully Submitted this 29th Day or March, 2005,

Darren Raiguel
ePlus Technology
130 Futura Drive
Pottstown, PA 19464

I certify a correct copy of this Application for Review has been delivered via postal service to:

Schools and Libraries Division
Box 125 Correspondence Unit
80 South Jefferson Road
Whippany, NJ 07981

USAC

Universal Service Administrative Company
Schools & Libraries Division

Demand Payment Letter
SECOND REQUEST
Funding Year 2002: 7/01/2002 - 6/30/2003

December 23, 2004

Darren Raiguel
ePlus Technology, Inc.
130 Futura Drive
Pottstown, PA 19464 3708

- PAST DUE NOTICE -
THIS NOTICE PROVIDES IMPORTANT INFORMATION ABOUT YOUR ACCOUNT AND YOUR RIGHTS AND OBLIGATIONS UNDER LAW

Re:	**SPIN:**	**143006553**
	Form 471 Application Number:	**314883**
	Funding Year:	**2002**
	FCC Registration Number:	**0**
	Applicant Name:	**VINELAND SCHOOL DISTRICT**
	Billed Entity Number:	**123417**
	Applicant Contact Person:	**Steve Dantinne**

You were recently sent a Demand Payment Letter informing you of the need to recover funds for the Funding Request Number(s) (FRNs) listed on the Funding Commitment Adjustment Report (Report) attached to this letter. Our records indicate that you have not responded to the Demand Payment Letter. As of August 06, 2004, the debt was past due and delinquent.

THE FOLLOWING PROVISIONS CONTAIN IMPORTANT INFORMATION AND A DESCRIPTION OF LEGAL RIGHTS, OBLIGATIONS, AND OPPORTUNITIES

1. Debtor is cautioned that failure to make the demanded payment or make other satisfactory arrangements will result in further sanctions, including, but not limited to, the initiation of proceedings to recover the outstanding debt, together with any applicable administrative charges, penalties, and interest pursuant to the provisions of the Debt Collection Act of 1982 (Public Law 97-365) and the Debt Collection Improvement Act of 1996 (Public Law 104-134), as amended (the DCIA), as set forth below.

2. If we do not receive full payment of the outstanding debt within 30 days of the date of this letter (Demand Date), pursuant to the DCIA, you may incur additional charges and costs, and the debt may be transferred to the Federal Communications Commission (Commission or FCC) and/or the United States Department of Treasury (Treasury) for debt collection. The FCC has determined that the funds are owed to the United States pursuant to the provisions of 31 U.S.C. § 3701 and 47 U.S.C. § 254. Because the unpaid amount is a debt owed to the United States, we are required by the DCIA to impose interest and to inform you what may happen if you do not pay the full outstanding debt. Under the DCIA, the United States will charge interest from the date

ATTACHMENT 1

If sending payment by U. S. Postal Service or major courier service (e.g. Airborne, Federal Express, and UPS) please send check payments to:

Universal Service Administrative Company
1259 Paysphere Circle
Chicago, IL 60674

If you are located in the Chicago area and use a local messenger rather than a major courier service, please address and deliver the package to:

Universal Service Administrative Company
Lockbox 1259
540 West Madison 4th Floor
Chicago, Il 60661

Local messenger service should deliver to the Lockbox Receiving Window at the above address.

PAYMENT MUST BE RETURNED IMMEDIATELY

Complete program information is posted to the SLD section of the USAC web site at www.sl.universalservice.org. You may also contact the SLD Technical Client Service Bureau by e-mail using the "Submit a Question" link on the SLD web site, by fax at 1-888-276-8736 or by phone at 1-888-203-8100.

Universal Service Administrative Company
Schools and Libraries Division

cc: Steve Dantinne
VINELAND SCHOOL DISTRICT

ATTACHMENT 1 (CONF.)

USAC

Universal Service Administrative Company
Schools & Libraries Division

Demand Payment Letter
SECOND REQUEST
Funding Year 2002: 7/01/2002 - 6/30/2003

December 23, 2004

Darren Raiguel
ePlus Technology, Inc.
130 Futura Drive
Pottstown, PA 19464 3708

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Chicago, IL 60674

If you are located in the Chicago area and use a local messenger rather than a major courier service, please address and deliver the package to:

Universal Service Administrative Company
Lockbox 1259
540 West Madison 4th Floor
Chicago, Il 60661

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Universal Service Administrative Company
Schools and Libraries Division

cc: Steve Dantinne
VINELAND SCHOOL DISTRICT

ePlus Technology

Letter of Appeal
Schools and Libraries Division
Box 125 Correspondence Unit
80 South Jefferson Road
Whippany, NJ 07981

Re: Demand Payment Letter
Form 471 Number: 314883
Funding Request Number: 825491
Funding Year: 2002
Billed Entity Number: 123417
Applicant Name: Vineland School District
Vendor Name: ePlus Technology, Inc
SPIN: 143006553

Dear Sir:

With this correspondence ePlus Technology, Inc. wishes to appeal the Universal Service Administrative Company (USAC) Demand Payment Letter dated December 23, 2004. We are afforded this opportunity under FCC regulation. This appeal is timely filed with USAC under FCC rule as the December 23 Demand Payment Notice was the first and only notice of alleged USAC rule violation delivered to ePlus.

With this appeal we seek to suspend any "Red Light" rule action by the FCC and/or USAC as provided under the FCC Fifth Order on Reconsideration under Docket Number 02-6.[1]

Introduction

In this appeal we will show that USAC failed to notify ePlus of an alleged violation of E-Rate rules by Vineland School District prior to December 23, 2004. Because the first notice of payment demand was delivered to ePlus on December 23, USAC improperly sought fund repayment from ePlus, contrary to the Fourth Report and Order in Docket Number 02-6. We will show that any E-Rate rule infraction was clearly not the fault of ePlus and ePlus had no control over the alleged violation of E-Rate rule or policy by Vineland. We will also show documented cases of USAC incompetence unparalleled in private industry or government, which we feel contributed to the USAC failure to properly and timely notify ePlus of apparent rule violation and necessity to recoup funding.

[1] CC Docket No. 02-6, Order, FCC 04-190 (rel. August 13, 2004)

ATTACHMENT 3

Statement of Facts

During the E-Rate filing window for Funding Year Six (July 1, 2002 through June 30, 2003), ePlus Technology entered into a contract with Vineland School District, New Jersey to provide services that were eligible for E-Rate funding. Vineland filed FCC Form 471 seeking discounts of eligible services provided under the contract. After thorough review by the staff of USAC, Vineland was funded for E-Rate discounts on eligible services provided by ePlus. During the fund year, ePlus provided services to Vineland and billed the school district the non-discounted amount, authorized by USAC and billed USAC the discounted amount. On March 03,2003, Vineland paid ePlus for the services and on 06/27/03 via wire USAC paid ePlus for authorized E-Rate discounts.

Subsequent to the services being rendered, invoices issued and payment made, USAC initiated a review of the Vineland application. During the review, USAC determined Vineland had "...failed to demonstrate that at the time of filing the Form 471 the financial resources necessary to pay the non-discounted charges on your application, as well as the rest of the items that you outlined in your technology budget, had been secured. As a result, the commitment amount is rescinded in full." [2]

In correspondence dated July 7, 2004 from USAC to Dawn Belden, Vineland School District, 133 N. State Street, Newton, PA with a salutation: "Dear Service Provider Contact:" USAC indicated a "Commitment Adjustment Letter" had been recently sent to you (service provider) that funds needed to be recovered for the Funding Request Number (FRN) under appeal here. The letter continues with instructions on how the service provider should remit payment. On Page three of the correspondence, USAC indicates that a copy of the correspondence was sent to Dawn Belden, Vineland School District, 133 N. State Street, Newton, PA. (Correspondence attached here as Attachment 1). It should be noted here that Dawn Belden is an E-Rate consultant with Educational Consortium for Telecommunications Savings and not an employee of either Vineland School District or ePlus Technology. It should also be noted that ePlus Technology did not receive the July 7 correspondence from USAC and has never received the Commitment Adjustment Letter mentioned in the first paragraph of the July 7 letter.

In correspondence dated December 23, 2004 from USAC to Darren Raiguel, ePlus Technology, Inc. 130 Futura Drive, Pottstown, PA, with no salutation at all, USAC issued a Demand Payment Letter, SECOND REQUEST (correspondence attached here as Attachment 2). This correspondence requested immediate payment to USAC of $32,583.06 from ePlus. According to the correspondence, a copy of the letter was sent to Steve Dantinne of the Vineland School District. This letter was the FIRST notice ePlus was given regarding an alleged rule violation by Vineland and the FIRST notice of repayment demand. It should be noted here that the first communication properly

[2] Demand Payment Letter dated December 23, 2004, Page 4

delivered to ePlus concerning this "Commitment Adjustment" occurred after December 23, 2004.

Discussion

The E-Rate program was established under the Telecommunications Act of 1996 to "... establish competitively neutral rules - (A) to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms..."[3] for advanced services, such as those funded here under appeal.

The FCC was charged with promulgating regulations governing the implementation of the Act. The FCC ordered that a not-for-profit corporation be established to administer the program. The current administrator is USAC. Within USAC are three divisions responsible for collection and disbursement of Universal Service funds; The High Cost, Low Income Division, the Rural Health Division, and the Schools and Libraries Division, collectively known as the Administrator.

During its tenure, the Administrator has utterly failed to establish a track record of satisfactory service. It has in fact demonstrated time and time again that it is incapable of carrying out FCC directives or its basic mission at any level. Documented cases of improper application rejections, incompetent reviewers, and mis-directed payments abound.[4]

It should come as no surprise that the Administrator has again failed to establish proper procedures for implementation of Commitment Adjustments, as demonstrated by this case. Barring any substantiated evidence contrary to assertions made in this appeal, the Administrator's demonstrated and continued mistakes should compel any reasonable reviewer to believe the assertions of applicants over the Administrator. With this appeal, we ask the Administrator to produce copies of the original "Commitment Adjustment Letter" mentioned in paragraph one of the July 7 correspondence to Dawn Belden, including copies of this letter sent to other parties.

In the course of reviewing and distributing nearly $2.25 Billion in funding to approximately 25,000 applicants, some funding will be disbursed in error. When the Administrator discovers it committed funds in error, it is compelled to seek repayment of those funds. Repayment was typically sought from the vendor in most cases, as the vendor was the recipient of funding.[5] A number of parties sought reconsideration of this regulation asking the FCC to seek reimbursement from applicants where appropriate.[6]

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[3] United States Code Title 47, Section 254(h)(2)

[4] In year two of the program, some 800 applicants improperly received funding denials in the form of "Pink Postcards" when the Administrator failed to properly process correspondence received by applicants. In the summer of 2004, at least 13 of 25 (over half) applications were improperly rejected when refiled under the FCC's "Yesleta Order." During the fall of 2004, at least 100 payments to vendors on behalf of applicants were sent to the wrong vendors.

[5] CC Docket Nos. 97-21 and 96-45, Order, FCC 99-291 (rel. October 8, 1999)

On July 30, 2004 the FCC released the Fourth Order on Reconsideration stating "Based on the more fully developed record now before us, we conclude that recovery actions should be directed to the party or parties that committed the rule or statutory violation in question."[7] The Fourth Order and subsequent Fifth Order reiterated that parties may challenge a ruling by the Administrator with the appeal process before the issuance of a letter demanding recovery of funds.[8] The Orders did not contemplate the absence of a decision letter by the Administrator before issuing a first or even second demand letter. In this instance, the Administrator did not properly serve ePlus with either a decision letter or first demand letter.

Because the December 23, Second Notice demand letter was the first properly served correspondence from the Administrator to ePlus, we should have 60 days from the date of the letter to appeal the decision in accordance with 47 CFR 54.722. Because this appeal is properly filed within the appeal window, and after the effective date of the Fourth and Fifth Orders, any action the Administrator or FCC has undertaken or plans to undertake against ePlus with regard to the FCC "Red Light" rule should be immediately suspended, pending resolution of this appeal. Finally, upon resolution of this appeal, if funds are to be recovered, they should properly be recovered from Vineland rather than ePlus, in accordance with the Fourth Order.

Recovery of funds from ePlus in this case is unwarranted. According to the December 23 Second Notice, the Commitment Adjustment for this funding request resulted from a review, or audit of Vineland's records. According to the letter: "During the course of review you failed to demonstrate that at the time of filing the Form 471 the financial resources necessary to pay the non-discounted charges on your application, as well as the rest of the items that you outlined in your technology budget, had been secured. As a result, the commitment amount is rescinded in full."

EPlus had absolutely no control over Vineland's budget, its budget planning process or its technology planning. Any shortcomings in the Vineland application or implementation of E-Rate funded services rests with Vineland and not ePlus. In accordance with the Fourth and Fifth Orders, again, in effect when ePlus received the first correspondence dated December 23, all fund recovery should be directed to the party responsible for E-Rate rule infraction – Vineland.

(Commitment Adjustment Order)

[6] Petitions for Reconsideration were filed by MCI WorldCom, Inc. (WorldCom), Sprint Corporation (Sprint), and the United States Telecom Association (USTA). Additional comments in support of the Petitions for Reconsideration were filed by Nextel Communications, Inc. (Nextel) and AT&T Corp. (AT&T).

[7] CC Docket Nos. 97-21, 96-45 and 02-6, Order, FCC 04-181 (rel July 30, 2004) at 10

[8] FCC 04-190 at 40

We respectfully ask that the Administrator rule in our favor, suspend Red Light enforcement, and seek recovery from the party at fault.

Sincerely,

Darren Raiguel
Vice President
ePlus Technology
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Pottstown, PA 19464-3708